

Highlights of the 2011 Rule Amendments

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Idaho Supreme Court Rules Advisory Committees

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The following is a list of rule amendments that will go into effect on July 1, 2011. The orders amending these rules can be found on the Internet on the Idaho Judiciary's home page at <http://www.isc.idaho.gov/rulesamd.htm>.

Idaho Appellate Rules

The Appellate Rules Advisory Committee is chaired by Chief Justice Daniel Eismann.

Rule 14. Time for filing appeals. In July 2010 the length of time for retained jurisdiction was changed from 180 days to 365 days. I.A.R. 14 provided that the length of time to file an appeal in these cases was enlarged by the time the court retained jurisdiction and that the time for an appeal commenced to run when the court released jurisdiction or placed the defendant on probation. Waiting a year makes for an untimely appellate process and a defendant who wishes to challenge the conviction itself should not have to wait a year to do so.

The 2011 amendment requires that a challenge to the conviction be filed within 42 days of the judgment. The sentence may also be appealed at that time or it may be appealed after the court enters an order relinquishing jurisdiction or placing the defendant on probation; however, the time for an appeal from the order relinquishing jurisdiction or placing the defendant on probation begins to run separately from that order. Thus, if the defendant has appealed the judgment of conviction, then a separate notice of appeal will have to be filed if he or she later decides to also appeal from the order entered after the period of retained jurisdiction.

Rule 17. Notice of appeal- contents. The amendment to this rule was made necessary by the amendment to Rule 14. It clarifies that an appeal from a judgment of conviction does not include a later order relinquishing jurisdiction after a period of retained jurisdiction or an order granting probation following a period of retained jurisdiction.

Rule 24. Reporter's transcript. The time for the transcript to be prepared has been changed so that it does not start to run until the reporter is given notice of the transcript request by the Supreme Court. The title is amended to delete a reference to payment to the clerk in trust.

Rule 25. Reporter's transcript – Contents. The amendment is to subsection (c) and clarifies that the standard transcript only applies to criminal appeals.

Rule 34. Briefs on appeal. The amendment clarifies that the original brief must be bound.

Rule 42. Petition for rehearing. The amendment reflects that an original and six copies of the brief are due instead of nine copies. This is the same number of copies for the court for briefs on appeal.

Idaho Civil Rules of Procedure.

The Idaho Civil Rules Advisory Committee is chaired by Justice Warren Jones.

New Rule 3(c). Privacy protections for filings made with the court. In 2009 the Idaho Supreme Court appointed the Ad Hoc Committee on Protecting Information in Court Files, chaired by Justice Jim Jones. The court was concerned about public access to personal identifying information in court files. The Committee reviewed the federal rules on protecting identifying information as well as rules from other states and proposed both a civil and criminal rule. The civil rule has been widely circulated and revised a number of times to address concerns presented by attorneys, judges, court clerks, and state agencies. At this time the court has adopted a civil rule only.

The rule states that the parties shall refrain from including or shall partially redact, where inclusion is necessary, certain personal data identifiers from all documents filed with the court. This includes exhibits, but only if those exhibits are actually filed with the court. If the personal data identifiers are needed, then the party has two choices. The party may file a redacted copy of the documents along with a reference list that identifies each item of redacted information. This list is exempt from disclosure, pursuant to I.C.A.R. 32. The other option is to file the redacted document along with an unredacted copy, in which case the unredacted copy will be exempt from disclosure. However, it should be noted that I.C.A.R. 32 does provide that records that are otherwise exempt from disclosure are still accessible by the parties to the action and their attorneys, except for adoption records, records in proceedings to terminate parental rights, documents filed *in camera* and the family law case information sheet. Judges, clerks, trial court administrators and other staff employed by or working under the supervision of the courts who are acting within the scope of their duties have access to all documents that are exempt from disclosure pursuant to Rule 32. So, even if the reference sheet or unredacted original is made exempt from disclosure, parties will have access to it as will court personnel.

There are several exceptions stated in the rule, including cases that are already exempt from disclosure such as adoptions or cases involving termination of parental rights, and cases that are required by statute to have certain personal data identifiers. This is in recognition that 42 USC § 666, entitled “requirement of statutorily prescribed procedure to improve effectiveness of child support enforcement”, requires recording of social security numbers in certain cases. Other examples, are the Uniform Interstate Family Support Act and I.C. § 7-1026, which require personal information to be in the pleadings when a person seeks to establish or modify a support order or determine parentage, including residential addresses, social security numbers and dates of birth of each child.

There is also a section on orders of the court that again has exceptions, including an exception for orders that are required by statute to include personal data identifiers.

Rule 5(b). Service- how made. This rule now allows for service by email if the person consents in writing. The rule has also been reorganized.

Rule 6 (c) (6). Child support guidelines. The tax tables are updated to reflect recent changes to federal tax laws.

Rule 16(j). Child custody mediators. This rule has been amended to clarify the requirements to be placed on the Supreme Court roster. Several licensed professionals have been added to the list of individuals who may become mediators consistent with the terms used by the Idaho Board of Licenses. The rule now requires that the training required to be placed on the roster be completed within two years of the application. The rule further requires that the initial training to be placed on the roster be in person and not via on-line training. The rule changes the timing to complete CEUs from two years to three years with the CEU hours per year remaining the same. The rule also adds a requirement that two of the required training hours have an ethics component.

Rule 81(g). Nature of Trial, and Rule 83(d). Record of proceeding of magistrates division. The court hearing a small claims action is now required to make a verbatim record or recording of the proceeding.

Filing Fee Schedule. There are additional statutory fees required for all divorces that add up to an extra \$41.00. While there is usually no fee for a counterclaim, the fee schedule notes that if the counterclaim is for divorce when the original complaint did not allege a claim for divorce then the extra \$41 must be paid. The fee schedule has been amended to also collect this additional \$41 when a cross-claim for divorce is filed when the original complaint did not include a divorce.

Idaho Criminal Rules

The Idaho Criminal Rules Advisory Committee is chaired by Justice Roger Burdick.

New Rule 18.1. Mediation in criminal cases. In 2010 the Idaho Supreme Court appointed an ad hoc committee to consider a rule on criminal mediation, to be chaired by Senior Judge Barry Wood. The new rule is a result of the work of that committee. Any party or the court may initiate a request for mediation to resolve some or all of the issues. Participation is voluntary and requires agreement of all the parties. Mediation is defined as well as the matters subject to mediation. After considering the recommendations of the parties, the court selects the mediator from those maintained on a roster provided by the Administrative Director of the Courts. The roster will include senior or sitting judges or justices who have indicated a willingness to mediate and who have had at least twelve hours of training in mediation. The role of the mediator is defined. The rule addresses confidentiality and states that mediation proceedings are privileged in all respects and not reported or recorded. No statement made by a participant in mediation shall be admissible at the trial of any defendant in the case or be considered for any purpose in sentencing of the defendant. Any agreement reached must be approved by the court. Permissible

communications between the mediator and the court and the mediator and attorneys are addressed. The court, the mediator or any party may terminate the mediation at any time.

Rule 32. Standards and procedures governing presentence investigations and reports. The amendment allows presentence investigators to have expanded access to the defendant's earlier presentence reports from previous cases.

Rule 33.3. Evaluation of persons guilty of domestic assault or domestic battery. The amendments relate to those persons who are maintained on the Idaho Supreme Court roster of Domestic Assault and Battery Evaluators and who conduct evaluations on persons who plead guilty or are found guilty of domestic assault and battery. The amendment clarifies that the evaluator may get national Criminal History Record Information from local law enforcement or any other authorized individual or agency to use in the course of an evaluation. The amendment also requires evaluators to sign confidentiality agreements relating to the receipt and handling of this criminal justice information.

Rule 35(c). Credit for time served. This rule provided that a motion to correct the computation for time served prior to sentencing may be corrected at any time. However, it was noted that post-judgment credit for time served might arise from a bench warrant for a probation violation where the defendant is kept in jail until the matter can be heard. The amendment to Rule 35 as it relates to credit for time served is meant to clarify that it applies to time served both prior and post-judgment. This is accomplished by referring to credit granted pursuant to I.C. § 18-309 that refers to time served pre-judgment and I.C. § 19-2603 that refers to time served after a probation violation. The intent is also to make it clear that credit for time served does not refer to a calculation by the Department of Correction.

Rule 41. Search and seizure. A definition of daytime is added for purposes of executing a daytime only search warrant. Daytime is defined as the hours between 6:00 a.m. and 10:00 p.m. according to local time.

New Rule 43.3. Forensic Testimony by Video Teleconference. This new rule allows forensic testimony to be submitted in court proceedings via simultaneous video teleconference. Everyone must be able to see and hear each other and simultaneously communicate. The party wishing to present by video teleconference must give the other party 28 days notice and the other party must object or agree in writing no later than 14 days before the proceeding. The video testimony is recorded in the same manner as any other testimony, and it is up to the party offering the testimony to coordinate the audio visual feed into the courtroom. There is no duty placed on court personnel.

The rule was prompted by the fact that the state experts who analyze blood, breath, and urine are located in Coeur d'Alene or Pocatello. Allowing forensic testimony by video teleconference will not only help alleviate the travel costs associated with forensic testimony, but will also allow those laboratories to operate more efficiently as it will cut back on time the forensic scientists are traveling or waiting in a courtroom and thus help with the turnaround time in test results. This is a benefit to both the state and defendants.

Rule 54.1. Appeals from a magistrate to a district court - Appealable judgments and orders. In 2008, I.C.R. 2.2 was amended to so that the administrative district judge, rather than the

Supreme Court, has the authority by order to appoint a specific attorney magistrate to hear and try one or more specific actions which are otherwise triable only by a district judge, or by order to enlarge categories of cases assignable under Rule 2.2(c) to the attorney magistrates of the judicial district. The amendment to 54.1 clarifies that the appeal in this case goes directly to the Supreme Court.

Idaho Rules of Evidence

The Evidence Rules Advisory Committee is chaired by Judge Karen Lansing.

Rule 512. Comment upon or inference from claim of privilege; instruction. The amendment is intended to clarify that the purpose of Rule 512(a) is to prevent drawing inferences from invocation of only those privileges that are created in Evidence Rules, e.g., the attorney/client privilege or the physician/patient privilege, and that it does not prevent drawing an inference from the invocation of a constitutional privilege in cases where that would otherwise be allowed.

Idaho Juvenile Rules.

The Juvenile Rules Advisory Committee is chaired by Judge John Varin

New Rule 12.1. Mediation in criminal cases. The same rule on criminal mediation that is part of the criminal rules was also made part of the juvenile rules.

Rule 33. Summons (C.P.A.) and Rule 34 Endorsement on summons (C.P.A.). These rules relate to the removal of a child in a child protection action when a court order is sought to remove the child. The amendments are made to conform to statutory changes made several years ago replacing the term “endorsement on the summons” with “Order of removal”. There are also several minor changes to reflect current practice relating to who may file the petition and the process by which a parent seeks appointment of counsel. Finally, several minor grammatical changes were made.

Idaho Misdemeanor Rules

The Idaho Misdemeanor/Infraction Rules Advisory Committee is chaired by Judge Michael Oths.

Bail Bond Schedule. The bond schedule has been amended for a charge of second DUI or an enhanced DUI. The bond amounts are the same but there is now a provision that the person bonding out must appear in court for arraignment within 48 hours, excluding weekends and holidays. The purpose of the amendment is to bring the defendant before a magistrate judge so that conditions of release may be added if appropriate.

Rule 5. Uniform citation – issuance- service- form – number – distribution. A new subsection (b) has been added to this rule that states a defendant arrested or cited and subsequently released for DUI, second offense, or DUI, enhanced penalty, shall personally appear before the magistrate

for arraignment within 48 hours, excluding weekends and holidays. The arraignment may be postponed if the defendant is hospitalized or otherwise in a condition that prevents the defendant from being taken before the magistrate judge.

Rule 6. First appearance and plea before the clerk of the court. The amendment just refers to the above exception noted in Rule 5.

Administrative Court Rules

Rule 32. Records of the Judicial Department-examination and copying- exemption from and limitations on disclosure. The new rule on privacy protections for filings made with the court also requires an amendment to Rule 32 to add the reference list of personal data identifiers or an unredacted copy of a document filed pursuant to I.R.C.P. 3(c) to the items exempt from disclosure.

Rule 47. Criminal history checks. Domestic assault and battery evaluators are added as a category of individuals subject to a criminal history check.

New Rule 54. Guardianships and Conservatorships. This new rule relates to the Guardianship and Conservatorship on-line training course that has been developed under the oversight of the court and the Guardianship and Conservatorship Committee. The on-line training is designed to teach prospective guardians and conservators about the duties and responsibilities of those roles. The rule requires every individual seeking appointment as a guardian or conservator to complete the training prior to appointment. The rule further provides that the court may impose a \$25 fee to cover the cost of providing this training.

New Rule 59. Vexatious Litigation. This rule addresses the problem of persons who engage in vexatious litigation and consequently hinder the effective administration of justice. It provides that an Administrative District Judge (ADJ) may find a person to be a vexatious litigant based on a finding that the person: (1) in the past seven years, has commenced or maintained pro se at least three litigations, other than small claims, that have been determined adversely to that person; (2) after a litigation has been finally determined against the person, has repeatedly relitigated or attempted to relitigate, pro se, the validity of the determination; (3) while acting pro se, repeatedly files unmeritorious motions, pleadings or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay; or (4) has previously been declared to be a vexatious litigant by a state or federal court. If the ADJ finds the person to be a vexatious litigant, the judge may enter a prefiling order prohibiting that person from filing any new litigation pro se in any Idaho court without first obtaining leave of the judge of the court where the litigation is to be filed. The ADJ would first issue a proposed prefiling order and the person would have 14 days to file a written response. If a response is filed, the ADJ would have discretion to grant a hearing on the proposed order. A prefiling order could be appealed to the Supreme Court. The Administrative Director of the Courts will maintain a list of persons subject to prefiling orders.